

# Staff Summary Report



Hearing Officer Hearing Date: August 7, 2007

Agenda Item Number: 14

**SUBJECT:** This is a public hearing for a request by **FOX RESIDENCE (PL070306)** located at 520 East Manhattan Drive in the R1-6, Single Family Residential District for one (1) variance.

**DOCUMENT NAME:** 20070807dssd07

**PLANNED DEVELOPMENT (0406)**

**SUPPORTING DOCS:** Yes

**COMMENTS:** Hold a public hearing for a request by the **FOX RESIDENCE (PL070306)** (Darwin Fox, applicant/property owner) located at 520 East Manhattan Drive in the R1-6, Single Family Residential District for:

**VAR07021** Variance to raise the height of the fence/wall in the front yard setback from four-feet (4') to five-feet eight inches (5' 8").

**PREPARED BY:** Shawn Daffara, Planner II (480-858-2284)

**REVIEWED BY:** Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

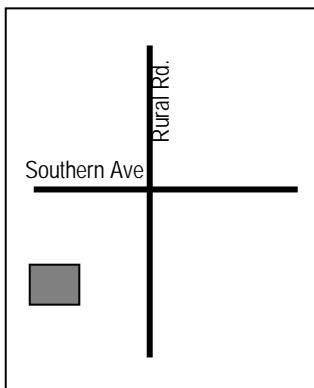
A handwritten signature in black ink, appearing to read 'SEA'.

**LEGAL REVIEW BY:** N/A

**FISCAL NOTE:** N/A

**RECOMMENDATION:** Staff – Denial subject to Conditions 1-3

**ADDITIONAL INFO:** The Fox Residence is before the Hearing Officer to request a variance to increase the wall height in the front yard setback from the maximum allowed four feet (4') to five feet eight inches (5'-8"). The applicant had constructed an over-height, five feet eight inches (5'-8") fence in the front yard, unaware that the Zoning and Development Code limits wall heights to four feet (4) in the front yard setback. To date, staff has received one (1) letter of support for this case. Staff recommends denial of the variance owing to lack of hardship, special circumstances or evidence indicating potential loss of substantial property rights.



**PAGES:**

1. List of Attachments
2. Comments;
3. Reason for Denial; Conditions of Approval; History & Facts/Description; Zoning & Development Code Reference

**ATTACHMENTS:**

1. Location Map(s)
2. Aerial Photo(s)
- 3-4. Letter of Intent
5. Neighborhood Meeting Announcement
6. Neighborhood Meeting Minutes
7. Neighborhood Meeting Attendance Roster
8. Letter of Support
9. Site plan
- 10-13. Applicant Photograph(s)
14. Staff Photograph(s)

## COMMENTS:

The Fox Residence is before the Hearing Officer to request a variance to increase the wall height in the front yard setback from the maximum allowed four feet (4') to five feet eight inches (5'-8"). The applicant had constructed an over-height, five-feet, eight inches (5'-8") fence in the front yard unaware that the Zoning and Development Code limits wall heights to four feet (4') in the front yard setback. The applicant was issued a code compliance notice to obtain a variance or reduce the wall height to no taller than four-feet (4').

To date, staff has received one (1) letter of support for this case. Staff recommends denial of the variance owing to lack of hardship, special circumstances or evidence indicating potential loss of substantial property rights.

## Variance

The Zoning and Development Code requires a variance for a wall/fence greater than four feet (4') in height that is located in the front yard setback, in the R1-6, Single Family Residential District.

Evaluating the variance, the proposal appears to meet the criteria for approving the variance:

- a. There are special circumstances or conditions applying to the land, building, or use referred to in the application;
  - There doesn't appear to be a special circumstance keeping with the land, building or use. Applicant indicates the special circumstance is an elderly parent confined with dementia.
- b. That authorizing the variance is necessary for the preservation and enjoyment of substantial property rights;
  - A five feet eight inch (5'-8") wall is not necessary for enjoyment of substantial property rights.
- c. That authorizing the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to public welfare in general.
  - The property owner received a notice from Neighborhood Enhancement, indicating there was a complaint filed on the height of the fence. As it appears, the fence doesn't match the existing residence.

## Neighborhood Meeting

Applicant had the neighborhood meeting on Monday, July 11, 2007 at 6:30 p.m..

Six (6) neighbors attended the meeting and asked a few questions. The applicant explained the purpose of the wall was to create a private courtyard at his property. Neighbors requested the new fence be painted to match the existing residence.

## Conclusion

Staff recommends denial of the variance.

## REASON(S) FOR

### DENIAL:

1. No special circumstances or conditions applying to the land, building or use exist.

2. The authorizing of the variance is not necessary for the preservation and enjoyment of substantial property rights.
3. Authorization of the variance(s) will may be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

**SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.**

**CONDITION(S)  
OF APPROVAL:**

1. The variance is granted at five feet eight inches (5'-8"). The wall can't exceed five feet eight inches (5'-8") without processing of a new variance application.
2. Obtain all necessary clearances from the Building Safety Division.
3. The wall shall be painted to match the existing residence.

**HISTORY & FACTS:**

April 26, 1962                      Building Permit issued for single family home.

**DESCRIPTION:**

Owner – Darwin Fox  
Applicant – Darwin Fox  
Existing Zoning – R1-6, Single Family Residential District  
Lot Size- 7,291 s.f. / .16 acres  
Required Fence Height – 4'  
Existing Fence Height – 5'-8"  
Front yard Setback– 20'

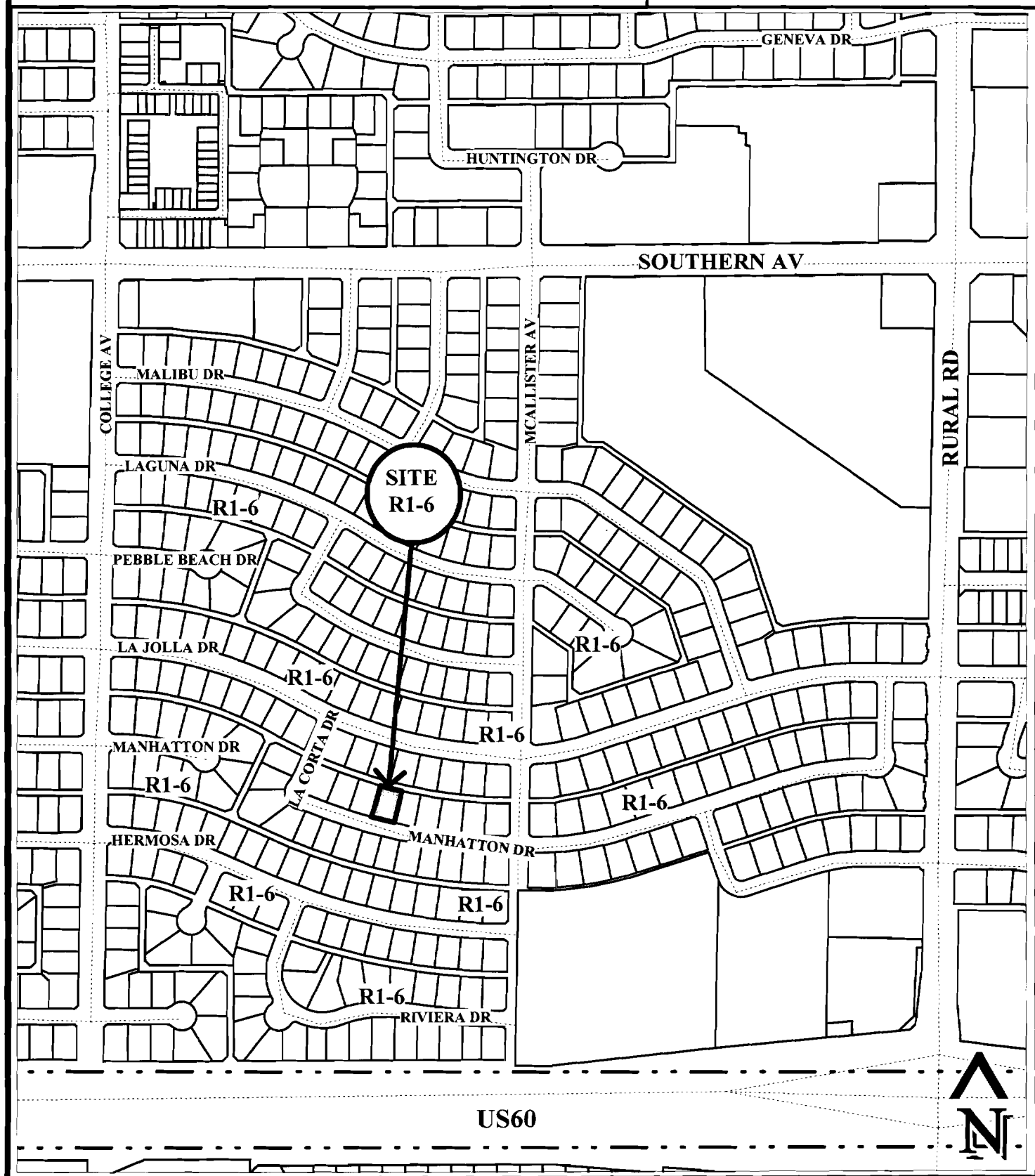
**ZONING AND  
DEVELOPMENT  
CODE REFERENCE:**

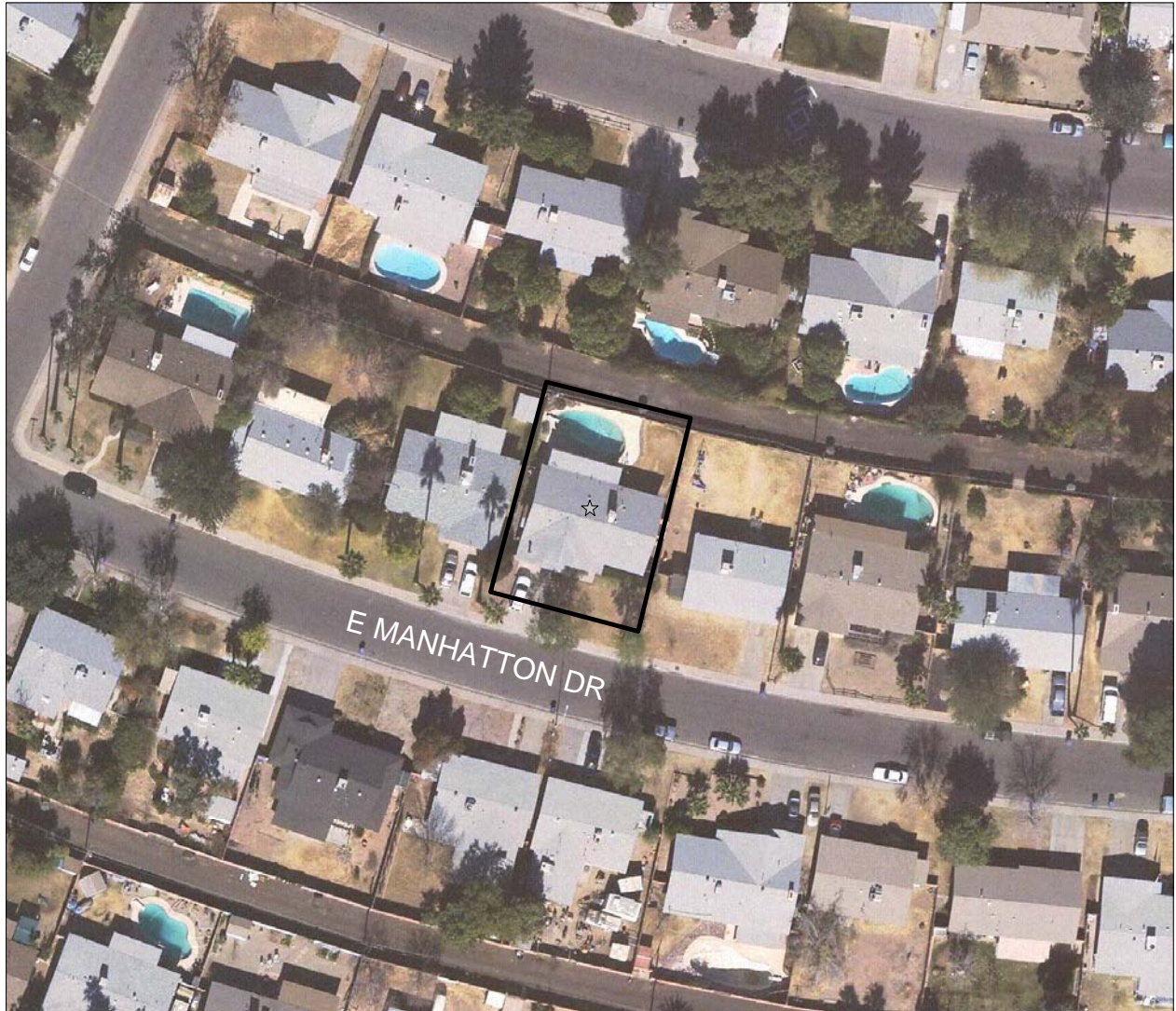
Part 4, Chapter 7, Section 4-706: General Fence and Wall Height Standards

Part 6, Chapter 3, Section 6-309: Variances

**FOX RESIDENCE**

**PL070306**





FOX RESIDENCE (PL070306)

Darwin V. Fox  
520 E. Manhattan Drive  
Tempe, AZ 85282

July 11, 2007

Please accept this letter as my request for a variance related to a courtyard wall recently built at my home at **520 E. Manhattan Drive**. I have been informed that the wall does not meet the Tempe code.

Please know that I did not intentionally seek to violate the building code. I am an idea person and admit to my lack of knowledge in the construction part. However, to learn of code requirements, I called the Tempe Office of Development Services in November, 2006 and also consulted with a neighbor who is a licensed contractor working in Tempe. In both cases I was informed that measurements for the wall began from my property line, which, I was told, is the inside edge of the sidewalk and that a permit was not required.

My wall is 17'4" from the inside edge of the sidewalk, which is within allowable limits. However, as a result of the complaint against my wall I have come to know that the property line is positioned 25 feet from the center of the street. On my street, which has a width of slightly less than 40 feet, that makes the property line a full 5 feet past the inside of the sidewalk. My wall is now effectively 12' 4" from the property line, well outside the limits. There are streets in my neighborhood that are slightly less than 50 feet, which puts the inside edge of the sidewalk as the property line. Apparently this is the kind of street that the Office of Development Services thought I lived on.

The construction of the wall started on December 24, 2006 and ended in late April. I designed the wall to incorporate the materials of today with the Spanish Hacienda style of yesterday in it's shape, size, color, texture, and use of accent colors. These accent colors are drawn from the Arizona State flag in the form of bottles. The blue skies are reflected in thirty-five German Cobalt Blue bottles, white clouds are represented in the four antique Heinz bottles from the 1800's and five green Spanish bottles that represent our high country. In keeping with the Spanish style there are no sharp corners or right angles, only gentle curves and rounds. Except for installing the iron gate, the wall is complete. The outer area will be "Xeroscape" with two desert trees, while the courtyard will express a feeling of serenity and welcome. To achieve this affect I have purchased a large green marble boulder fountain with a small catch pond, in direct and lamp lighting, pockets of indigenous desert trees and shrubs, with stone paths leading to different spots. The lower half of the house will

match the wall for a continuous color flow. The final touch to my creation will be provided by nature in the form of weathering.

Facts and figures about the wall, the foundation is 12"x12" concrete reinforced with double lengths of rebar. The wall is made of 8x8x16 and 8x8x8 cement blocks and is reinforced with rebar every four feet then grouted the full height of the wall. The wall cap is a half round of cement that was hand applied. The wall is 5'8" at its highest point. There are two finishing coats of stucco that were applied 30 days apart. The finish coat is tinted an earth tan. The 44 bottles can be seen from both sides and reflect colored light. The gate opening is 4 feet wide.

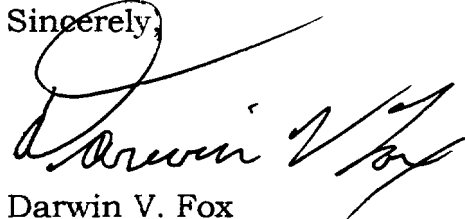
This wall, coupled with the improvements that I have enumerated will beautify my home, certainly. It will also raise the value of my home and thereby the surrounding homes. It is not just a concrete wall, but also a fully integrated structure that is in keeping with the Sonora Desert that we live in.

A complaint was filed regarding the wall's position and I received a letter from the City of Tempe informing me of the problem. Since receipt of that letter I have met with Development Services staff who have informed me of codes and ordinances, street and sidewalk size differences, formula to determine property boundaries, permits and variance. I have posted the public notice on my property and I have sent a notice to each property owner, within 300 feet of my property, giving them the time, date, location for a neighborhood public meeting (July 11) regarding my variance request. Within my variance package I have included all other documents, pictures and drawings that were requested.

I am requesting a variance to allow my wall to remain at its current height of 5'8".

Thank you for your consideration. I am requesting that you approve my variance permit

Sincerely,

A handwritten signature in black ink, appearing to read "Darwin V. Fox", with a stylized flourish at the end.

Darwin V. Fox



City of Tempe  
Development Services Department  
31 E. 5<sup>th</sup> Street, Garden Level, Tempe, AZ 85281  
Shawn Daffara – Planner II  
Phone: 480-858-2284

Darwin V. Fox  
Property Owner  
520 E. Manahatton Drive  
Tempe, AZ 85282  
480-840-5457

June 21, 2007

## **PUBLIC NOTICE FOR NEIGHBORHOOD MEETING**

### **CASE # CE072704**

The purpose of this neighborhood meeting is to provide a means for the property owner, Darwin V. Fox, to review with surrounding residential neighbors information about the front yard wall project and it's pending variance hearing.

Meeting Date: July 11, 2007

Time: 6:30 pm

Place: 520 E. Manhatton Drive

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## Minutes – Public Hearing 520 E. Manhatton, July 11, 2007

**6:37 p.m.**

Darwin Fox begins Public Hearing. Bob Francis takes notes. Total of five residences (six neighbors present.) Mr. Fox explains purpose of meeting related to his receipt of two City of Tempe complaints – one related to length and browning of front yard grass and second related to setback and height of recently completed courtyard wall at front door entryway. Mr. Fox let's neighbors know that meeting notice was posted as required in his front yard and that he did send letter to property owners from labels provided by staff of City of Tempe. Everyone is asked to sign an attendance roster. He indicates that he has not yet been given a date for the City of Tempe variance hearing.

Mr. Fox addresses first complaint explaining that he has been watering front yard and that both trees will be remove on July 12. His plan is to have a xeriscape landscaping in the front yard. Discussion occurs related to plans for additional parking space between driveway and neighbors property line and the need for some type of border to be installed when using gravel. Main complaint is discussed as regarding the setback of the wall from the property line and it's height. The street width, ½ the distance from the center of the street (25 ft. including a five foot easement). He indicates that according to City of Tempe that from that point within 20 feet, a permit will or be issued for a four foot wall.

Mr. Fox explains the purpose of meeting is “public notice.” Discussion occurs regarding the complaints. Support of neighbors attending is given verbally regarding wall and efforts on behalf of front lawn.

An explanation is given related to the neighborhood Codes, Covenants and Restrictions and the original developer and neighborhood plan. Mr. Fox states that current wall is 17'6" from property line and that permissible wall height is 24" although allowance can be made up to four feet. His is five feet, eight inches and thus his request for a variance. He reviews his plans for the interior of the courtyard, front yard and driveway xeriscape landscaping.

Mr. Fox distributes copies of the applicant statement related to the complaints and a statement from the wall's builder. Everyone present indicates that they are comfortable with his plans and the current wall and wish him well with his variance hearing.

**7:10 p.m.**

Meeting adjourned.

Neighborhood Public Meeting  
Case # CE072704  
Meeting Date: July 11, 2007  
Time: 6:30 pm  
Place: 520 E Manhattan Drive

### Attendance Rooster

Print Name	Sign Name	Home Address
Bob Francis	Bob Francis	534 E. Pebble Beach Dr. - Tempe
Nancy Morris	Nancy Morris	514 E Manhattan Tempe
Lorrie Miller	Lorrie Miller	510 E. Manhattan Dr. Tempe
Dusty Morris	Dusty Morris	514 E Manhattan Dr Tempe
Krista Jennings	Krista Jennings	541 E. Manhattan Dr Tempe
Terwin Fox	Terwin Fox	520 E Manhattan Dr Tempe

To: Variance Process

From: ChristiAnne Stephens, builder of walls

Re: Wall constructed at 520 Manhattan Dr. Tempe, AZ

Building codes exist to facilitate "good neighbor" attitudes. They prevent one neighbor from taking advantage of another by providing guidelines for construction and modification of privately owned homes. They provide redress for a neighbor who might believe that someone is violating a particular part of the code to the detriment of himself and possibly other neighbors. They also provide a means by which a homeowner can appeal for relief from a particular part of this code, all in the spirit of "neighborliness".

But I wonder about this "neighborliness". I began this wall in late December of 2006. I did all of the work myself as I have done since the late '60s, when I began building concrete walls. Because I work alone and, in this case, because I work full-time as a teacher it took quite awhile to finish it- actually it took four months. Many people happened by as I worked on it and openly admired its design and the simple beauty of its curves (no right angles on this wall!). I had no reason to believe that I had built anything other than a wall that Darwin's neighbors were proud of.

Well over a month after the wall's completion Darwin was served with a complaint notice. Five months from the time it was started to file the complaint. Wouldn't it have been "neighborly" to remark to Darwin or me that the wall may well be in violation? The height of the wall was in evidence no later than a month after I began building. At the very least, it would have been "neighborly" to file the complaint as soon as it became apparent to the complainant that the wall violated code.

In the spirit of "neighborliness" I would ask that a variance be granted in this case, not only for the reasons that Darwin has enumerated, but also for the apparent punitive nature of the complaint and after all-it is a beautiful wall!

Sincerely

  
ChristiAnne Stephens



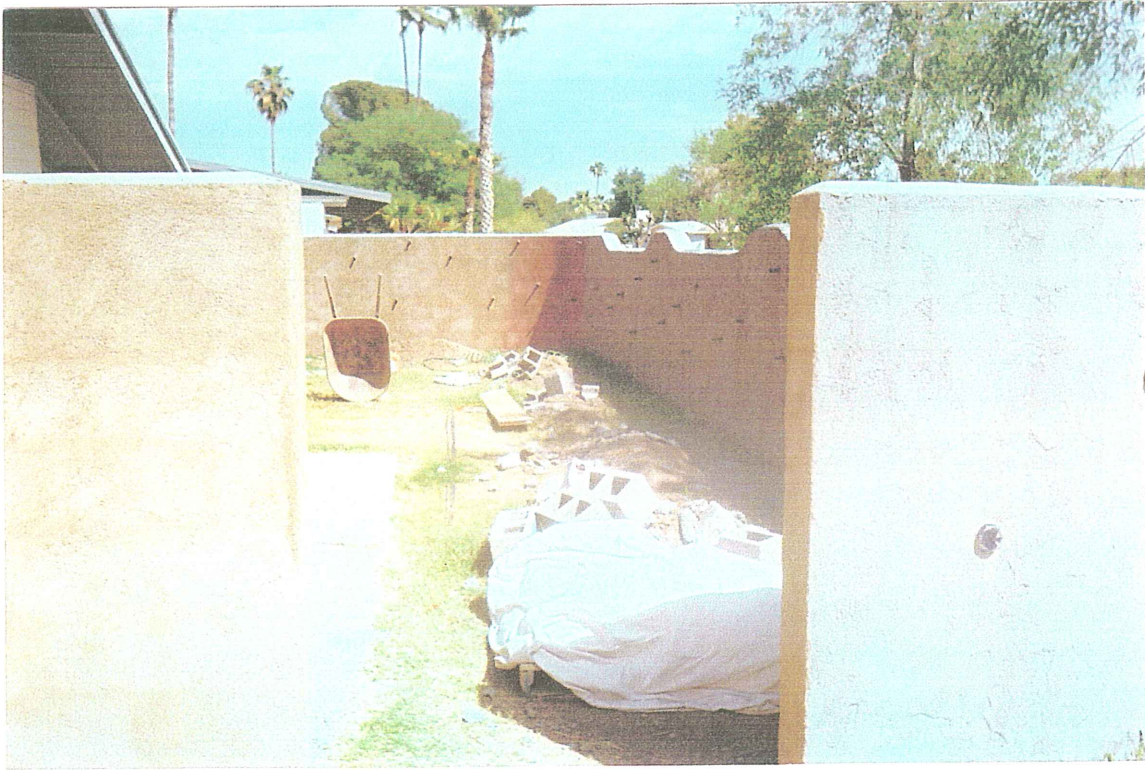


in side looking out South ↑



ATTACHMENT West ↑





East ↑



East ↑





East ↑



# Gate Sample





**FOX RESIDENCE**

**520 E. MANHATTON DR**

**PL070306**

**FRONT OF PROPERTY: VIEW TO NORTH**